

Senate File 497 - Introduced

SENATE FILE 497
BY COMMITTEE ON STATE
GOVERNMENT

(SUCCESSOR TO SF 26)

A BILL FOR

1 An Act relating to residential property by establishing a home
2 inspector registration program, establishing surety bond
3 requirements for certain contractors, providing penalties,
4 and including effective date provisions.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 DIVISION I
2 HOME IMPROVEMENT
3 CONTRACTOR BONDING

4 Section 1. Section 91C.2, Code 2011, is amended by adding
5 the following new subsection:

6 NEW SUBSECTION. 4. The contractor shall be in compliance
7 with section 91C.6A, if applicable.

8 Sec. 2. Section 91C.6, Code 2011, is amended to read as
9 follows:

10 **91C.6 Rules.**

11 The labor commissioner shall adopt rules, pursuant to
12 chapter 17A, determined to be reasonably necessary for phasing
13 in, administering, and enforcing the system of contractor
14 registration and bonding established by this chapter.

15 Sec. 3. NEW SECTION. 91C.6A Home improvement contractor
16 **performance bond — penalty.**

17 1. For purposes of this section, unless the context
18 otherwise requires:

19 *a. "Division"* means the division of labor services of the
20 department of workforce development.

21 *b. "Home improvement contract"* means any contract for the
22 performance of improvements or repairs of existing residential
23 property, including appurtenances to the property, or that is
24 related to the use of the residential property, including but
25 not limited to garages, driveways, swimming pools, sidewalks,
26 patios, and fences.

27 2. A contractor, prior to entering into a home improvement
28 contract in this state, shall file a surety bond with the
29 division. The bond shall be in the amount of fifty thousand
30 dollars and shall be for the benefit of any person who,
31 in connection with a home improvement contract with the
32 contractor, sustains damages as the result of the contractor's
33 breach of the home improvement contract or by the contractor's
34 violation of chapter 714H. A person sustaining such damages
35 may file a claim against the bond without assignment, and may

1 recover from bond proceeds actual damages, court costs, and to
2 such person's attorney, reasonable attorney fees.

3 3. The surety bond shall be executed by a surety company
4 authorized to do business in this state, and the bond shall
5 be continuous in nature until canceled by the surety with not
6 less than thirty days' written notice to the contractor and
7 to the division of the surety's decision to cancel the bond.
8 The surety's obligation under the bond shall continue until
9 the surety has fully satisfied the notice requirements of this
10 section.

11 4. A person filing a claim against a bond under this
12 section shall notify the division at the time the claim is
13 filed. The division shall maintain a record, available for
14 public inspection and copying of all such claims filed. The
15 requirement to notify the division is not a precondition of
16 filing a claim, and failure to notify the division shall not
17 affect the validity of a claim. However, notification must be
18 provided to the division prior to payout of any bond proceeds
19 under this section.

20 5. The attorney general may bring an action in equity to
21 recover bond proceeds on behalf of persons who have incurred
22 damages as the result of a contractor's breach of a home
23 improvement contract or for violations of section 714.16 in
24 connection with a home improvement contract.

25 6. Priority of payment of bond proceeds filed pursuant to
26 this section shall be based upon the time of filing a notice
27 of a claim with the division, except that any action by the
28 attorney general to recover bond proceeds shall be superior to
29 all other claims on the bond regardless of the time of filing.

30 7. The failure of a contractor to have a valid surety
31 bond on file with the division at any time a home improvement
32 contract is in effect shall make the contract and any note,
33 instrument, or other evidence of indebtedness executed or
34 entered into in connection with the contract voidable, and
35 the failure to have such a bond shall constitute a complete

1 defense in any action based on the contract, note, instrument,
2 or other evidence of indebtedness brought by the contractor or
3 the contractor's successors or assigns.

4 8. A contractor who violates this section is guilty of a
5 simple misdemeanor.

6 Sec. 4. NEW SECTION. 91C.10 Unlawful practice.

7 A violation of this chapter is an unlawful practice pursuant
8 to section 714.16.

9 Sec. 5. EFFECTIVE DATE. This division of this Act takes
10 effect January 1, 2012.

11 DIVISION II

12 HOME INSPECTOR REGISTRATION

13 Sec. 6. NEW SECTION. 104.1 Title.

14 This chapter may be known and cited as the "*Iowa Home*
15 *Inspector Registration and Bonding Act*".

16 Sec. 7. NEW SECTION. 104.2 Definitions.

17 As used in this chapter, unless the context otherwise
18 requires:

19 1. "*Registrant*" means a person who registers under this
20 chapter.

21 2. "*Department*" means the Iowa department of public safety.

22 3. "*Governmental subdivision*" means any city, county, or
23 combination thereof.

24 4. "*Home inspection*" means the examination and evaluation
25 of the exterior and interior components of residential real
26 property, which includes the inspection of any two or more
27 of the following components of residential real property in
28 connection with or to facilitate the sale, lease, or other
29 conveyance of, or the proposed sale, lease, or other conveyance
30 of, residential real property:

31 a. Heating, ventilation, or air conditioning system.

32 b. Plumbing system.

33 c. Electrical system.

34 d. Structural composition.

35 e. Foundation.

1 *f.* Roof.

2 *g.* Masonry structure.

3 *h.* Any other residential real property component established
4 by rule under this chapter.

5 5. "*Home inspector*" means a person who, for compensation
6 either direct or indirect, performs home inspections.

7 6. "*Residential real property*" means real property that is
8 an owner-occupied single-family or two-family dwelling located
9 in this state and occupied or used or intended to be occupied
10 or used for residential purposes, including an interest in any
11 real property covered under chapter 499B.

12 Sec. 8. NEW SECTION. 104.3 Rules.

13 The department shall adopt rules necessary to implement this
14 chapter.

15 Sec. 9. NEW SECTION. 104.4 Fees.

16 1. A registrant under this chapter shall pay an annual
17 registration fee of fifty dollars to the department.

18 2. All fees collected under this chapter shall be considered
19 repayment receipts as defined in section 8.2 and shall be
20 retained by the department and shall be used for any of the
21 department's duties under this chapter. Moneys retained by the
22 department pursuant to this section are not subject to transfer
23 or reversion to the general fund of the state.

24 Sec. 10. NEW SECTION. 104.5 Registration required —
25 exception.

26 1. A person shall not perform a home inspection without
27 being registered under this chapter.

28 2. Following an initial registration, each registrant shall
29 file an annual registration renewal with the department.

30 3. A person shall not engage in the business of home
31 inspections unless at all times a registered home inspector
32 is employed by the person and is actively in charge of
33 performing the home inspections. An individual who performs
34 home inspections pursuant to a business operated as a sole
35 proprietorship shall be a registered home inspector.

1 4. The registration requirements of this chapter shall not
2 apply to any of the following:

3 a. An employee of any unit of state or local government,
4 including but not limited to cities, counties, or school
5 corporations, performing home inspections while acting within
6 the scope of the government employee's employment.

7 b. An employee or an agent of an insurer organized or
8 operating under chapter 515, 518, or 518A, while acting within
9 the scope of the employee's or agent's employment or agency.

10 c. Real estate brokers or salespersons as defined in chapter
11 543B.

12 d. Professional engineers licensed under chapter 542B.

13 e. Architects registered pursuant to chapter 544A.

14 f. Certified real estate appraisers under chapter 543D.

15 g. An employee or agent of a financial institution, as
16 defined in section 527.2, subsection 9, while acting within the
17 scope of the employee's or agent's employment or agency.

18 Sec. 11. NEW SECTION. 104.6 **Change of residence.**

19 If a person registered to perform home inspections under
20 this chapter changes the person's residence or place of
21 practice, the person shall so notify the department.

22 Sec. 12. NEW SECTION. 104.7 **Local licensing or registration**
23 **requirements.**

24 1. The provisions of this chapter regarding the
25 registration of home inspectors shall not be construed to
26 supersede or preempt home inspector licensing or registration
27 provisions of a governmental subdivision.

28 2. Nothing in this chapter shall prohibit a governmental
29 subdivision from assessing and collecting inspection fees
30 related to inspections performed by a registered home
31 inspector.

32 Sec. 13. NEW SECTION. 104.8 **Insurance and surety bond**
33 **requirements.**

34 1. A person who registers or renews a registration pursuant
35 to this chapter shall, prior to approval of the registration

1 or renewal by the department, provide evidence of a public
2 liability insurance policy and surety bond in an amount of not
3 less than fifteen thousand dollars.

4 2. If the registrant performs home inspections individually
5 through a business conducted as a sole proprietorship, the
6 registrant shall personally obtain the insurance and surety
7 bond required by this section. If the registrant is engaged
8 in the home inspection business as an employee or owner of a
9 legal entity, the insurance and surety bond required by this
10 section shall be obtained by the entity and shall cover all
11 home inspections performed by the entity.

12 3. The insurance and surety bond shall be written by
13 an entity licensed to do business in this state and each
14 registered home inspector shall maintain on file with the
15 department a certificate evidencing that the insurance or
16 surety bond shall not be canceled without the entity first
17 giving fifteen days' written notice to the department.

18 Sec. 14. NEW SECTION. 104.9 **Deceptive representations of**
19 **registration — violations.**

20 1. Only a person who is duly registered pursuant to this
21 chapter may represent in connection with the sale of home
22 inspection services the fact that the person is registered as a
23 home inspector in the state of Iowa.

24 2. A violation of this chapter or a rule adopted pursuant
25 to this chapter is an unlawful practice pursuant to section
26 714.16. The provisions of section 714.16, including but not
27 limited to provisions relating to investigation, injunctive
28 relief, and penalties, shall apply to this chapter.

29 Sec. 15. Section 558A.4, subsection 2, Code 2011, is amended
30 to read as follows:

31 2. The disclosure statement may include a report or written
32 opinion prepared by a home inspector registered under chapter
33 104 or a person qualified to make judgment based on education
34 or experience, as provided by rules adopted by the commission,
35 including but not limited to a land surveyor licensed pursuant

1 to chapter 542B, a geologist, a structural pest control
2 operator licensed pursuant to section 206.6, or a building
3 contractor. The report or opinion on a matter within the scope
4 of the home inspector's or person's practice, profession, or
5 expertise shall satisfy the requirements of this section or
6 rules adopted by the commission regarding that matter required
7 to be disclosed. If the report or opinion is in response
8 to a request made for purposes of satisfying the disclosure
9 statement, the report or opinion shall indicate which part of
10 the disclosure statement the report or opinion satisfies.

11 Sec. 16. Section 558A.6, subsection 2, Code 2011, is amended
12 to read as follows:

13 2. The home inspector or person submitting a report or
14 opinion within the scope of the home inspector's or person's
15 practice, profession, or expertise, as provided in section
16 558A.4, for purposes of satisfying the disclosure statement,
17 shall not be liable under this chapter for any matter other
18 than a matter within the home inspector's or person's practice,
19 profession, or expertise, and which is required by the
20 disclosure statement, unless the home inspector or person
21 failed to use care ordinary in the home inspector's or person's
22 profession, practice, or area of expertise in preparing the
23 information.

24 Sec. 17. EFFECTIVE DATE. This division of this Act takes
25 effect January 1, 2012.

26 EXPLANATION

27 This bill relates to residential property by establishing
28 a home inspector registration program and establishing surety
29 bond requirements for certain contractors.

30 Division I of the bill requires contractors, prior to
31 entering into a home improvement contract, as defined in the
32 bill, to file a surety bond with the division of labor services
33 of the department of workforce development. The bond is
34 required to be in the amount of \$50,000 and is for the benefit
35 of any person who, in connection with a home improvement

1 contract with the contractor, sustains damages as the result of
2 the contractor's breach of the home improvement contract or by
3 the contractor's violation of Code chapter 714H (private right
4 of action for consumer frauds Act). The bill provides that the
5 surety bond requirement is a condition of registration with the
6 labor commissioner for contractors doing business in the state.

7 The bill specifies additional requirements relating to the
8 execution and cancellation of the bond, the claim and notice
9 procedures for seeking recovery of damages against the bond,
10 and the priority of payment of bond proceeds. The bill also
11 specifies that the attorney general may bring an action in
12 equity to recover bond proceeds on behalf of persons who have
13 incurred damages as the result of a contractor's breach of a
14 home improvement contract or for violations of Code section
15 714.16 (consumer frauds) in connection with a home improvement
16 contract.

17 The bill provides that the failure of a contractor to have a
18 valid surety bond on file with the division of labor services
19 at any time a home improvement contract is in effect shall
20 make the contract and any note, instrument, or other evidence
21 of indebtedness executed or entered into in connection with
22 the contract voidable, and the failure to have such a bond
23 constitutes a complete defense in any action based on the
24 contract, note, instrument, or other evidence of indebtedness
25 brought by the contractor or the contractor's successors or
26 assigns.

27 The bill provides that a contractor who violates new Code
28 section 91C.6A is guilty of a simple misdemeanor. A simple
29 misdemeanor is punishable by confinement for no more than 30
30 days or a fine of at least \$65 but not more than \$625 or by
31 both. The bill also provides that a violation of Code chapter
32 91C is an unlawful practice pursuant to Code section 714.16
33 (consumer frauds).

34 Division I of the bill takes effect January 1, 2012.

35 Division II of the bill establishes the Iowa home inspector

1 registration and bonding Act in new Code chapter 104.

2 The bill prohibits a person from performing a home
3 inspection without being registered. Following an initial
4 registration, each registrant is required to file an annual
5 registration renewal with the department of public safety.

6 The bill specifies that a person shall not engage in the
7 business of home inspections unless at all times a registered
8 home inspector is employed by the person and is actively in
9 charge of performing the home inspections. An individual who
10 performs home inspections for a business operated as a sole
11 proprietorship shall be a registered home inspector.

12 The bill requires each registrant to pay an annual
13 registration fee of \$50 to the department of public safety.
14 All fees collected by the department shall be used for the
15 department's duties under new Code chapter 104, and such moneys
16 are not subject to transfer or reversion to the general fund
17 of the state.

18 The registration requirements of new Code chapter 104 do not
19 apply to an employee of a unit of state or local government
20 performing home inspections while acting within the scope of
21 the government employee's employment, an employee or an agent
22 of an insurer organized or operating under Code chapter 515,
23 518, or 518A, while acting within the scope of the employee's
24 or agent's employment or agency, real estate brokers or
25 salespersons as defined in Code chapter 543B, professional
26 engineers licensed under Code chapter 542B, architects
27 registered pursuant to Code chapter 544A, certified real estate
28 appraisers under Code chapter 543D, or an employee or agent of
29 a financial institution, as defined in Code section 527.2(9),
30 while acting within the scope of the employee's or agent's
31 employment or agency.

32 The bill specifies that the provisions of Code chapter 104
33 shall not be construed to supersede or preempt home inspector
34 licensing or registration provisions of a governmental
35 subdivision and nothing in new Code chapter 104 prohibits

1 a governmental subdivision from assessing and collecting
2 inspection fees related to inspections performed by a
3 registered home inspector.

4 The bill establishes certain surety bond requirements for
5 home inspectors required to register under the bill. The bill
6 provides that only a person who is duly registered pursuant
7 to new Code chapter 104 may represent in connection with the
8 sale of home inspection services the fact that the person is
9 registered as a home inspector in the state of Iowa.

10 The bill provides that a violation of new Code chapter 104 or
11 of a rule adopted pursuant to the Code chapter is an unlawful
12 practice pursuant to Code section 714.16 (consumer frauds)
13 and the provisions of Code section 714.16, including but not
14 limited to provisions relating to investigation, injunctive
15 relief, and penalties, apply to new Code chapter 104.

16 Division II of the bill takes effect January 1, 2012.